

JOHN J. O'LOUGHLIN

IBLA 80-555

Decided September 15, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease N-20978.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease was mailed after the date it is due, there was no basis for reinstating the lease because of reasonable diligence.

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the insurance business practice of a grace period is not a justifiable excuse.

4. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: John J. O'Loughlin, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John J. O'Loughlin appeals from the February 11, 1980, decision of the Nevada State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease N-20978. Appellant's lease terminated by operation of law for failure to pay the annual rental on or before January 1, 1980.

Appellant's rental check was postmarked January 4, 1980, and received by BLM on January 11, 1980. On January 14, 1980, BLM sent appellant an oil and gas lease termination notice. O'Loughlin's petition for reinstatement was received by BLM on January 25, 1980. It stated, "The payment of the lease rental was not due to a lack of diligence. I was under the mistaken [opinion] that there was a grace period for making payment similar to some of the States leases."

BLM denied reinstatement on the ground that there was not reasonable diligence in making the payment and on the additional ground that the facts alleged by appellant did not justify late payment.

In his statement of reasons for appeal appellant states as the reason for late payment: "I was laboring under the misapprehension that there was a standard grace period for making payment similar to

the State leases, insurance policy renewals, mortgage payments and other installment obligations. As a result of my ignorance in this field, I mailed my check on January 4, 1980."

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976).

[2] Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). The rental payment was due on the first working day after the anniversary date of January 1, 1980, *i.e.*, January 2, 1980. Appellant's check was postmarked January 4, 1980. Generally when the rental payment is not mailed before it is due, there can be no basis for reinstating an oil and gas lease because of reasonable diligence. Albert R. Fairfield, 34 IBLA 133 (1978); Dolores M. Heggie, 28 IBLA 222 (1976). There is none here.

[3] In order for the failure to pay rental timely to be justifiable, generally the failure must be caused by factors outside the lessee's control, which were the proximate cause of failure. James E. Kordosky & Robert A. Weiss, 43 IBLA 63 (1979); Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Adolph E. Muratori, 31 IBLA 39 (1977); Louis Samuel, 8 IBLA 268 (1972). A lessee's ignorance of the law and reliance on his own insurance business practices and other situations where there is a grace period cannot be accepted as a "justifiable" excuse within the meaning of the reinstatement provisions. Id.

[4] It is well settled that all who deal with the Government are presumed to have knowledge of the pertinent statutes and duly promulgated regulations, regardless of their actual knowledge of what is therein contained. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Robert W. Hansen, 46 IBLA 93 (1980); Willene Minnier, 45 IBLA 1 (1980); 44 U.S.C. §§ 1507, 1510 (1976).

The burden of showing that the failure to pay the rent when due was justifiable or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-1(c)(2). Appellant has failed to meet this burden.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

